IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1585 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI U SONI

Versus

LABOUR COMMISSIONER

Appearance:

1. Special Civil Application No. 1585 of 1999

MR AS SUPEHIA for Petitioner No. 1

Mr ND Gohil Asstt.GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 10/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Supehia for the

petitioner and Mr.ND Gohil learned Asstt GP for the respondents. According to the case of the petitioner, he was working as Assistant Labour Officer and was placed under suspension by order dated 28th November, 1984 pending prosecution wherein he was ultimately he was convicted and the appeal against conviction filed by him was also dismissed by this court as well as the apex court. Thereafter, the petitioner was dismissed from service on 30.4.1996 which was having effect from 22nd July, 1993. Said order of dismissal was challenged by the petitioner before the tribunal. The tribunal passed order on 29th October, 1997 and dismissed the appeal of the petitioner by upholding the order of dismissal dated 30.4.1996 with modification that the order of dismissal will be having effect from 30.4.1996 and not with effect from 22nd July, 1993.Thereafter, the respondents filed petition before this court being special civil application no. 4884 of 1998 wherein this court has, by order dated 29.6.1998, observed that the the appeal of the present petitioner was dismissed with the modification that the impugned order of dismissal dated 30.4.1996 shall be effective from the date of the order dated 30.4.1996 and not from 22.7.1993. This Court, therefore, find no infirmity in the order of the tribunal and, therefore, rejected the petition moved by the present respondents.

In view of these facts, it is necessary to consider the order of suspension dated 28.11.1984. As per the said order of suspension dated 28.11.1984, the petitioner was placed under suspension during the pendency of the prosecution against the petitioner which was to remain in force upto the order of punishment. On 6th November, 1995, the petitioner received show cause notice from the Labour Commissioner to show cause as to why the major punishment of dismissal from service should not be imposed against him as per rule 6 of the Gujarat State (Discipline and Appeal) Rules, 1971. Reply to the said show cause notice was submitted by the petitioner through Central Jail, Baroda on 6th April, 1996 band ultimately, order of dismissal from service was passed on 30th April, 1996 having effect from 22nd July, 1993. By order dated 5th March, 1998, increments for the intervening period were granted in favour of the petitioner by the Government Labour Officer wherein it has been clarified in paragraph 3 that the petitioner is entitled for the suspension allowance till the date of dismissal but it was submitted by the learned advocate Mr. A.S. Supehia that no such suspension allowance has been paid to the petitioner for the period from 22nd July, 1993 to 30th April, 1996 for which the petitioner

is entitled according to the service rules.

Learned Asstt. Government Pleader Mr. N.D. Gohil appearing for the respondent authorities has submitted that in respect of the prayer of the petitioner for the suspension allowance for the aforesaid period, letter has already been addressed to the Government on 14th July, 1999 vide letter bearing No. 849 of 1999 and the respondents are awaiting the result thereof in respect of the difference of annual increment which has not been paid though there was specific order passed by the Government Labour Officer on 5th March, 1998 because some over payment was made to the petitioner towards the subsistence allowance of Rs.18,618.40 ps. which is required to be recovered from the petitioner. He also submitted that according to rule 153 of the Bombay Civil Service Rules, the petitioner is not entitled for any leave encashment benefit.

Considering the submissions made by the learned advocates for the parties and the statement made by the learned AGP Mr. N.D. Gohil in particular, one fact is clear that the order of dismissal dated 30th April, 1996 passed by the Labour Commissioner was, initially, having effect from 22nd July, 1993 which was modified as per the order of the tribunal with clarification that the order of dismissal will become effective from the date of the order dated 30th April, 1996 i.e. 30thApril, 1996 and as a consequence of such modification, petitioner will remain under suspension for a period from 22nd July, 1993 to 30th April, 1996 as the suspensiono rder was not revoked but the petitioner has not been paid the suspension allowance for the said period by the respondents. The petitioner is also entitled for the increments for the period for which the Government Labour Officer has already passed order on 5th March, 1998 but the amount of difference of increment as well as the suspension for the said period from 22nd July, 1993 to 30th April, 1996 has not been paid to the petitioner by the respondents in view of the over payment made to the petitioner in suspension allowance. Considering all these aspects, according to my opinion, the petitioner is entitled for the suspension allowance for the period from 22nd July, 1993 to 30th April, 1996.

Therefore, it is directed to the Labour Commissioner as well as the Secretary, Labour and Employment Department, Government of Gujarat to pass appropriate orders in respect of the letter of the Labour Commissioner bearing No. 841 of 1999 dated 14th June, 1999 and to grant the suspension allowance to the

petitioner for the period from 22nd July, 1993 to 30th April, 1996 within three months from the date of receipt of copy of this order after adjusting the over payment of Rs.18,618.40 ps. as submitted by the learned AGP Mr. ND Gohil on the basis of the letter dated 14th June, 1999. It is further directed to the respondents to pay the difference of the annual increments for the interim period within three months from the date of receipt of copy of this order. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.10.9.2003. (H.K. Rathod,J.)

Vyas